



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

Thomas A. Faha  
Regional Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
BIT INVESTMENT FIFTY-SIX, LLC  
FOR  
THE BIT INVESTMENT FIFTY-SIX FACILITY  
Registration No. 73342**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Bit Investment Fifty-Six, LLC, regarding the Bit Investment Fifty-Six Facility for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "BIT Investment" means BIT Investment Fifty-Six, LLC, a limited liability company, authorized to do business in Virginia and its affiliates, partners, and subsidiaries. BIT Investment is a "person" within the meaning of Va. Code § 10.1-1300.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means the BIT Investment Fifty-Six facility located at 1768 Old Meadow Road in McLean, Virginia.
6. "FCE" means a Full Compliance Evaluation.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
10. "Permit" means a Stationary Source Permit to operate five emergency generators and five above ground fuel storage tanks at a telecommunications switching office issued under the Virginia Air Pollution Control Law and the Regulations to Nextel Communications of the Mid-Atlantic, Inc. on March 31, 2006. On June 21, 2016, DEQ received a change of ownership notification for the Facility from BIT Investment Fifty-Six, LLC.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. BIT Investment owns, and MRP Realty manages and operates, an office building. The Facility is currently a vacant telecommunications switching office. The Facility is the subject of the Permit which allows BIT Investment to operate five emergency generators and five above ground fuel storage tanks at the Facility.
2. On July 31, 2017, Department staff conducted an FCE of the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:

- a. Department staff was informed by MRP Realty personnel that there were plans to demolish the existing building and build a residential property. While onsite, DEQ staff observed that run hours could not be determined.
3. Based on the findings of the July 31, 2017, FCE, DEQ sent a Mutual Determination Shutdown Letter to BIT Investment via email on August 1, 2017. BIT Investment responded to the letter on November 29, 2017, and noted that it did not wish to shut down the Facility and would not be signing the letter. Based on this information DEQ staff noted the following:
  - (a) During the FCE on July 31, 2017, BIT Investment was not able to provide documentation of operating hours for each emergency diesel generator.
  - (b) During the FCE on July 31, 2017, BIT Investment was not able to provide documentation that it was using approved fuel, that the fuel met permitted specifications, and BIT Investment could not provide the required fuel certification from the fuel supplier with each shipment of diesel oil.
  - (c) During the FCE on July 31, 2017, BIT Investment was not able to provide documentation of scheduled and unscheduled maintenance and operator training.
  - (d) During the FCE on July 31, 2017, BIT Investment was not able to provide documentation to demonstrate compliance with process emission limits.
4. Permit Condition 3 (Operating Hours) states each emergency diesel generator (Reference Nos. 1-5) shall not operate more than 500 hours per year, calculated monthly as the sum of each consecutive twelve-month period. Compliance for the consecutive twelve-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding eleven months.
5. Permit Condition 12a (On Site Records) states the permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. The content and format of such records shall be arranged with the Regional Air Compliance Manager of the DEQ's NRO at the address referenced in Condition 9. These records shall include but are not limited to: a) Annual hours of operation of each emergency generator (Reference Nos. 1-5) as referenced in Condition 3, calculated monthly as the sum of each consecutive twelve-month period. Compliance for the consecutive twelve-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding eleven months. These records shall be available for inspection by the DEQ and shall be current for the most recent five years.
6. Permit Condition 4 (Fuel) states the approved fuel for the emergency generators (Reference Nos. 1-5) is diesel oil. A change in fuel may require a permit to modify and operate.

7. Permit Condition 5 (Fuel) states that the diesel oil shall meet the specifications below:  
Diesel Oil which meets the ASTM D975 specifications for numbers 1 or 2 diesel fuel oil:  
Maximum sulfur content per shipment: 0.5% by weight.
8. Permit Condition 6 (Fuel Certification) states that the permittee shall obtain a certification from the fuel supplier with each shipment of diesel oil. Each supplier certification shall include the following: a) The name of the fuel supplier; b) The date on which the diesel oil was received; c) The quantity of diesel oil delivered in the shipment; d) The sulfur content of the diesel oil. Fuel sampling and analysis, independent of that use for certification, as may be periodically required or conducted by DEQ may be used to determine compliance with the fuel specifications stipulated in Conditions 4 and 5.
9. Permit Condition 12b (On Site Records) states the permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. The content and format of such records shall be arranged with the Regional Air Compliance Manager of the DEQ's NRO at the address referenced in Condition 9. These records shall include but are not limited to: b) All fuel supplier certifications as required by Condition 6. These records shall be available for inspection by the DEQ and shall be current for the most recent five years.
10. Permit Condition 16 (Maintenance/Operating Procedures) states that at all times including periods of start-up, shutdown and malfunction, the permittee shall, to the extent practicable, maintain and operate the affected source, including any associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. The permittee shall take the following measures in order to minimize the duration and frequency of excess emissions: a) Develop a maintenance schedule and maintain records of all scheduled and non-scheduled maintenance. b) Maintain an inventory of spare parts. c) Have available written operating procedures for equipment. These procedures shall be based on the manufacturer's recommendations, at a minimum. d) Train operators in the proper operation of all such equipment and familiarize the operators with the written operating procedures, prior to their first operation of such equipment. The permittee shall maintain records of the training provided including the names of the trainees, the date of training and the nature of the training.
11. Permit Condition 12d (On Site Records) states the permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. The content and format of such records shall be arranged with the Regional Air Compliance Manager of the DEQ's NRO at the address referenced in Condition 9. These records shall include but are not limited to: d) Scheduled and unscheduled maintenance, and operator training as per Condition 16. These records shall be available for inspection by the DEQ and shall be current for the most recent five years.
12. Permit Condition 7 (Process Emission Limits) states that emissions from the operation of each Onan emergency generators (Reference Nos. 1-4) shall not exceed the limits

specified below: Sulfur Dioxide: 2.6 lbs/hr 0.6 tons/yr Nitrogen Oxides (as NO<sub>2</sub>): 16.4 lbs/hr 4.1 tons/yr Carbon Monoxide: 2.1 lbs/hr 0.5 tons/yr. Emissions from the operation of the Kohler emergency generator (Reference No. 5) shall not exceed the limits specified below: Nitrogen Oxides (as NO<sub>2</sub>): 15.4lbs/hr 4.1 tons/yr Carbon Monoxide: 3.3 lbs/hr 0.9 tons/yr. These emissions are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits may be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined as stated in Conditions 3, 4, and 5.

13. Permit Condition 12c (On Site Records) states the permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. The content and format of such records shall be arranged with the Regional Air Compliance Manager of the DEQ's NRO at the address referenced in Condition 9. These records shall include but are not limited to: c) Monthly emissions calculations for pollutants using calculation methods approved by the Regional Air Compliance Manager of the DEQ-NVRO to verify compliance with the emissions limitations in Condition 7. These records shall be available for inspection by the DEQ and shall be current for the most recent five years.
14. On November 30, 2017, based on the observations noted during the FCE, and information received from the Permittee on November 29, 2017, the Department issued Notice of Violation No. ANRO000751 to BIT Investment for the violations described in paragraphs C(2) through C(13) above.
15. Based on the results of the July 31, 2017, FCE and information received from BIT Investment on November 29, 2017, the Board concludes that BIT Investment has violated Permit Condition 3, 4, 5, 6, 7, 16, 12a, 12b, 12c, and 12d , as described in paragraphs C(1) through C(13), above.
16. In order for BIT Investment to return to compliance, DEQ staff and representatives of BIT Investment have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders BIT Investment Fifty-Six, LLC, and BIT Investment Fifty-Six, LLC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$7,507.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

BIT Investment Fifty-Six, LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, BIT Investment Fifty-Six, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of BIT Investment Fifty-Six, LLC for good cause shown by BIT Investment Fifty-Six, LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, BIT Investment Fifty-Six, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. BIT Investment Fifty-Six, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. BIT Investment Fifty-Six, LLC declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by BIT Investment Fifty-Six, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. BIT Investment Fifty-Six, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. BIT Investment Fifty-Six, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BIT Investment Fifty-Six, LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and BIT Investment Fifty-Six, LLC. Nevertheless, BIT Investment Fifty-Six, LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after BIT Investment Fifty-Six, LLC has completed all of the requirements of the Order;
- b. BIT Investment Fifty-Six, LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to BIT Investment Fifty-Six, LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BIT Investment Fifty-Six, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by BIT Investment Fifty-Six, LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of BIT Investment Fifty-Six, LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind BIT Investment Fifty-Six, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of BIT Investment Fifty-Six, LLC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, BIT Investment Fifty-Six, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 30<sup>th</sup> day of August, 2018.

  
For \_\_\_\_\_  
Thomas A. Faha, Regional Director  
Department of Environmental Quality



BIT Investment Fifty-Six, LLC voluntarily agrees to the issuance of this Order.

Date: 8/23/18 By: William K. Mihm, Vice President/Assistant Secretary  
(Person) (Title)  
[BIT Investment Fifty-Six, LLC]

~~Commonwealth of Virginia~~ District of Columbia SS  
City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this 23rd day of August, 2018, by William K. Mihm who is Vice President/Assistant Secretary of BIT Investment Fifty-Six, LLC, on behalf of the company.

Ashley Best  
Notary Public

N/A  
Registration No.

My commission expires: 10-14-2019

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

BIT Investment Fifty-Six, LLC shall:

1. Comply with its Permit, including all record keeping requirements. Submit all records required by the Permit for Calendar Year 2018 to DEQ by January 10, 2019 for review.

### **2. Certification of Documents and Reports**

In accordance with 9 VAC 5-20-230(A), in all documents or reports submitted to DEQ pursuant to this Consent Order, BIT Investment Fifty-Six, LLC shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

### **3. DEQ Contact**

Unless otherwise specified in this Order BIT Investment Fifty-Six, LLC shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality  
Northern Regional Office  
Attention Enforcement  
13901 Crown Court  
Woodbridge, VA 22193